

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JERRY D. GRAYS,
PLAINTIFF.

CIVIL RIGHTS COMPLAINT

-vs-

ELMIRA CORRECTIONAL FACILITY,
CORRECTIONAL OFFICERS,

13 -cv- 532 JR

MR. D. MCGRAIN,

JURY DEMAND

MR. RONALD MANWARING,

MR. JOHN DOE #2,

MR. H. MCALINN, (HENCE HERE FORWARD MR. MCA.),

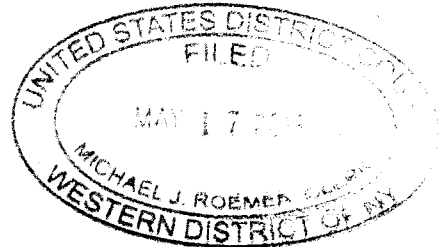
MR. JOHN DOE #3,

MR. JOHN DOE #4,

MISS JANE DOE,

DR. BRASALMANN, MEDICAL PROVIDER,

DEFENDANTS.



PLAINTIFF, JERRY D. GRAYS, AS AND FOR HIS COMPLAINT
AGAINST THE DEFENDANTS ALLEGES THE FOLLOWING:

STATEMENT OF JURISDICTION

1. This is a Civil Action seeking relief and/or damages to defend and protect the rights guaranteed by the Constitution of the United States. This action is brought Pursuant to 42 U.S.C. §§1983. The court has jurisdiction over the action pursuant to 28 U.S.C. §§1331, 1343(3) and (4), and 2201.

PARTIES TO THE ACTION

2. Plaintiff, JERRY D. GRAYS, is a diciliary of the State of New York. He is presently incarcerated in the New York State Department of Correctional Services, at the Clinton Correctional Facility, P.O. Box 2002, Dannemora, New York 12929; and, at all times relevent to this complaint, was incarcerated in the New York State Department of Correctional Services, and is a Citizen of the United States of America.

3. Defendant, MR. D. MCGRAIN, functions as a CORRECTIONAL OFFICER (HENCE HERE FORTH-C.O.), at the Elmira Correctional Facility located at P.O. Box 500, Elmira, New York 14902-0500.

4. Upon information and belief, MR. D. MCGRAIN, in his individual capacity is a C.O. His duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

5. In furtherance, MR. D. MCGRAIN, makes decisions which consist of following NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES (HENCE HERE FORTH-N.Y.S.D.O.C.S.); proceeedures; rules and regulations.

6. Defendant, MR. RONALD MANWARING, functions as a C.O. at the Elmira Correctional Facility located at P.O. Box 500, Elmira, New York 14902-0500.

7. Upon information and belief, MR. RONALD MANWARING, in his individual capacity is a Correctional Officer. His duties

consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

8. In furtherance, MR. RONALD MANWARING , makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

9. Defendant, MR. JOHN DOE #2, functions as a C.O. at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

10. Upon information and belief, MR. JOHN DOE #2, in his individual capacity is a C.O. His duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

11. In furtherance, MR JOHN DOE #2, makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

12. Defendant, MR. MCA; functions as a C.O. at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

13. Upon information and belief, MR. MCA; in his individual capacity is a C.O. His duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

14. In furtherance, MR. MCA; makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

15. Defendant, MR. JOHN DOE #3, functions as a C.O. at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

16. Upon information and belief, MR. JOHN DOE #3, in his individual capacity is a C.O. His duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

17. In furtherance, MR. JOHN DOE #3, makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

18. Defendant, MR. JOHN DOE #4, functions as a C.O. at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

19. Upon information and belief, MR. JOHN DOE #4, in his individual capacity is a C.O. His duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

20. In furtherance, MR. JOHN DOE #4, makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

21. Defendant, MISS JANE DOE, functions as a C.O. at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

22. Upon information and belief, MISS JANE DOE, in her individual capacity is a C.O. Her duties consist of overseeing the safety and security of the Elmira Correctional Facility, which include but are not limited to making rounds (counts), escorting Offenders to and from meals, ensuring Offenders safety and security.

23. In furtherance, MISS JANE DOE, makes decisions which consist of following N.Y.S.D.O.C.S. procedures; rules and regulations.

24. Defendant, DR. BRASALMANN, functions as a Medical Provider at the Elmira Correctional Facility, located at P.O. Box 500, Elmira, New York 14902-0500.

25. Upon information and belief, DR. BRASALMANN, in his individual capacity is a Licensed Medical Provider and in his Official capacity is a Medical Provider at the Elmira Correctional Facility.

26. In furtherance, DR. BRASALMANN'S, duties include maintaining AMBULATORY HEALTH RECORDS (HENCE HERE FORTH-A.H.R.), and to ensure that appropriate medical protocol is followed in accordance with medical standards; including but not limited to follow-up care, referrals for medical treatment and/or testing and on the spot emergency medical care.

PREVIOUS LAWSUITS IN STATE AND FEDERAL COURT

27. Plaintiff, JERRY D. GRAYS, does not have any lawsuits pending in the State or Federal Courts.

AS AND FOR PLAINTIFF'S CAUSE OF ACTION

28. The Plaintiff commences this Civil Rights Action against Defendants; MR. D. MCGRAIN, MR. RONALD MANWARING, MR. JOHN DOE #2, MR. MCA; MR. JOHN DOE #3, MR. JOHN DOE #4, MISS JANE DOE, AND DR. BRASALMANN, whereas Plaintiff's Constitutional Rights were repeatedly violated, regarding medical needs, cruel and unusual punishment, as the Defendants failed to protect the Plaintiff's Constitutional Rights, while under the supervision of each of the Defendants' care and custody.

29. On 8/9/11 Plaintiff arrived at the Elmira Correctional Facility to start his reception period. He was placed in A-BLOCK, 4-GALLERY, 8-CELL.

30. On 8/30/11 at 11pm lights went out (NORMAL PROCEEDURE) at APPROXIMATELY (HENCE HERE FORTH-APP.) 11:30pm, MR. D. MCGRAIN was doing his rounds, he saw Plaintiff sitting at his cell gate, at that time MR. D. MCGRAIN left. Moments later he came to Plaintiff's cell with a large garbage can full of cold water (on a hand cart), MR. D. MCGRAIN proceeded to throw several gallons of COLD water on Plaintiff and his personal property, including but not limited to his clothing, bedding, legal paper work and medications. When he was done with this water assault, he said "IF YOU COME TO CHOW IN THE MORNING I'M GOING TO PUMMEL YOUR FAT ASS". Plaintiff sat freezing the rest of the night in soaking wet cloths.

31. On 8/31/11 at APP. 6:30-7am, A-BLOCK, 4-GALLERY cells opened for "MANDATORY CHOW". Plaintiff noticed MR. D. MCGRAIN along with 10-15 other C.O.s waiting down by the B-BLOCK gate.

32. As Plaintiff, along with the rest of 4- GALLERY (APP. 45) OFFENDERS proceeded to chow, Plaintiff was confronted by MR. D. MCGRAIN , whom assaulted Plaintiff by repeatedly slapping his face and emphasizing "I TOLD YOU NOT TO COME TO CHOW TODAY" while all his co-workers stood by and watched. Among the onlookers was MR. RONALD MANWARING , MR. JOHN DOE #2, and MR. H. MCALINN.

33. This was followed by MR. D. MCGRAIN grabbing the Plaintiff's collar and slamming him against the wall. One of the other C.O.s then told MR. D. MCGRAIN , "TAKE HIM TO THE FLOOR". At that time the Plaintiff was SLAMMED to the concrete floor.

34. Upon hitting the floor TWO other C.O.s commenced to brutally assault Plaintiff, as MR. RONALD MANWARING , kicked him repeatedly in his back, MR. JOHN DOE #2 kicked him in the right side of his abdomen and right leg. This assault lasted several minutes while MR. D. MCGRAIN continued slapping and verbally assaulting the Plaintiff.

35. When Plaintiff was finally told to get up and get to chow, as he stood up he felt a severe pain in his right knee and noticed from the knee down his pant leg was saturated with blood, as he pulled up his pant leg a large gash was revealed just below his knee cap.

36. As Plaintiff's assailants noticed the excessive amount of blood, he was ordered to go back to his cell, not chow, he complied to the direct order, painfully.

37. APP. 8:15am as MR. MCA. made his normal rounds, Plaintiff informed him of his need for medical attention. MR. MCA. told Plaintiff he was not going to recieve any medical

attention. At this time Plaintiff asked to see a SERGEANT (HENCE HERE FORTH-SGT.) and to get a grievance form. MR. MCA. stated "IF YOU ASK AGAIN YOU WILL GO TO KEEPCLOCK AND/OR RECIEVE A WORSE BEATING THAN YOU ALREADY GOT!"

38. Plaintiff sat in his cell all day until the next shift change with his leg bleeding profussely and in great pain.

39. APP. 3pm, shift change, as 4-GALLERY C.O. did his rounds, Plaintiff stopped him at his cell, he informed the C.O. he needed to see a Medical Provider as he showed the C.O. the gash on his leg. After a brief discussion the C.O. informed him that he would get him to medical in a few minutes.

40. APP. 4pm. Plaintiff's cell gate opened, as he peered out, he was motioned to the forward part of the gallery by MR. JOHN DOE #3, Plaintiff painfully limped to the forward part of the gallery, where MR. JOHN DOE #3 asked "WHAT HAPPENED?", as Plaintiff started explaining what had happened, MR. JOHN DOE #3, said "THAT'S NOT WHAT HAPPENED, YOU FELL IN YOUR CELL" Plaintiff tried to explain to MR. JOHN DOE #3 that, that was not what happened, he had been assaulted by several C.O.s, MR. JOHN DOE #3 said "THE ONLY WAY YOU ARE GOING TO MEDICAL IS IF YOU UNDERSTAND WHAT I AM TELLING YOU, YOU FELL IN YOUR CELL, IF I HEAR YOU TOLD THEM ANYTHING DIFFERENT YOUR OTHER LEG WILL LOOK WORSE TOMMORROW".

41. MR. JOHN DOE #3 asked what the Plaintiff was incarcerated for, Plaintiff informed him that he was incarcerated on a conspiracy in the second charge. MR. JOHN DOE #3 stated he would talk to the C.O.s whom assaulted the Plaintiff and ensure it does not happen again. Before MR. JOHN DOE #3 sent him to medical, he

asked if the Plaintiff understood the "STORY" and if he did not have intentions of telling the "LIE" he would not be taken to medical. Plaintiff agreed to tell the "STORY" to get the medical attention his injuries required.

42. At this time Plaintiff was forced to walk to B-BLOCK where MR. JOHN DOE #4 was waiting to escort Plaintiff (made to walk) to the infirmary. When Plaintiff and MR. JOHN DOE #4 arrived at the infirmary, the C.O.s assigned to the infirmary, MISS JANE DOE and a male C.O. asked Plaintiff "WHAT HAPPENED", before he could responde to them MR. JOHN DOE #4, told them he fell in his cell.

43. Plaintiff was told to sit on a bench in the hall, he sat there APP. A HALF AN HOUR waiting to see a Medical Provider. while sitting there waiting a Porter (Offender) approached and asked "WHAT HAPPENED". Plaintiff told him of his assault by C.O.s, MISS JANE DOE told Plaintiff to watch his mouth stating "COMMENTS LIKE THAT CAN GET YOU HURT OR KILLED AROUND HERE".

44. At 5pm Plaintiff was seen by RN. KATHY TALADA, who asked "WHAT HAPPENED", MR. JOHN DOE #4 told her Plaintiff fell in his cell. RN. TALADA questioned his response and was again told by MR. JOHN DOE #4 that Plaintiff had fallen in his cell.

45. RN. TALADA asked MR. JOHN DOE #4 to go get her something, when MR. JOHN DOE #4 left the room she asked Plaintiff "WHAT REALLY HAPPENED?", when Plaintiff explained the assault to her, she informed him that she had to report the assault. RN. TALADA notified a SGT. and asked him to report to the infirmary.

46. MR. JOHN DOE #4 was talking to the SGT. outside

Plaintiff's room, Plaintiff heard MR. JOHN DOE #4 mention "PEE-PEE TOUCHER"(SEX OFFENDER).

47. When said SGT. came into the room Plaintiff asked "YOU WEREN'T TALKING ABOUT ME, WERE YOU?", SGT. said "NO WHY?" Plaintiff responded, saying "THAT'S NOT WHY I'M HERE, I AM HERE FOR CONSPIRACY TO COMMIT MURDER", SGT. stated he would be back in a few minutes and left the room.

48. When the SGT. returned, he stated "YOU DID NOT LIE TO ME, I JUST LOOKED YOU UP ON THE COMPUTER AND YOU ARE HERE ON A CONSPIRACY CHARGE, YOU DON'T HAVE A SEX CHARGE ANYWHERE ON YOUR RECORD, APPARENTLY THE C.O. WHO STARTED THIS ASSUALT THOUGHT YOU WERE A SEX OFFENDER, I WILL TALK TO HIM AND TELL HIM THE TRUTH AND MAKE SURE THIS DOESN'T HAPPEN AGAIN".

49. SGT. asked Plaintiff to tell him the REAL STORY about the assault, Plaintiff explained the whole situation while RN. TALADA cleaned and bandaged the injury. At this time the SGT. took photos of the injuries.

50. At this time the SGT. asked "WHAT DO YOU WANT TO DO?", Plaintiff informed the SGT; "I WANT TO FILE A COMPLAINT AND FORMAL CRIMINAL CHARGES". Plaintiff also informed the SGT. that he feared for his life and safety. SGT. said "I FEEL IT WOULD BE BEST IF YOU GO ALONG WITH THE STORY TO KEEP YOU SAFE FOR NOW".

51. Plaintiff informed the SGT. he intended on sueing the C.O.s involved, also he informed the SGT. he had full intentions of writing GOVERNOR ANDREW CUOMO, COMMISSIONER OF CORRECTIONS BRIAN FISCHER and the INSPECTOR GENERAL.

52. SGT. said he would put the Plaintiff in the infirmary to protect him, RN. TALADA at this time informed the Plaintiff, he was being sent to an outside hospital to get medical treatment i.e. staples or stitches.

53. At this time MISS JANE DOE along with another C.O. took Plaintiff in an elevator down to the holding area to await his transport to the outside hospital, while in the elevator MISS JANE DOE told the other C.O. about the Plaintiff telling the porter (SEE PARAGRAPH #43) about the assault, MISS JANE DOE and the other C.O. both threatened the Plaintiff, MISS JANE DOE said "YOU MUST NOT WANT TO GET OUT OF HERE ALIVE, KEEP YOUR MOUTH SHUT".

54. APP. 5:30pm Plaintiff was placed in a holding cell, awaiting transport to an outside hospital.

55. APP. 6pm Plaintiff was taken back up to the infirmary and placed in a room for the night, without ever going to an outside hospital.

56. A.H.R. dated 8/31/11, time 5pm, RN. TALADA spoke to DR. BRASALMAN, at 5:50pm, DR. stated he will take care of injury in the AM (9/1/11).

57. 9/1/11 at 2pm, Plaintiff was taken to an exam room where DR. BRASALMAN and RN. TALADA examined Plaintiff's injury, DR. BRASALMAN asked "WHAT HAPPENED?" When Plaintiff explained that he had been assaulted by C.O.s, DR. BRASALMAN stated he MUST report the incident and he notified a SGT. who came to interview Plaintiff (SECOND SGT. TO INTERVIEW PLAINTIFF REGARDING THIS ASSUALT).

58. When DR. BRASALMAN looked at the Plaintiff's right knee (injured knee) he asked "WHEN DID THIS HAPPEN?", he went on to

say "THIS IS NOT A FRESH WOUND, I CAN TELL IT IS ATLEAST A DAY OLD". Plaintiff told him it had accured the previous morning. DR. BRASALMANN asked why the injury had not been taken care of the previous day. Plaintiff explained to him that he had been refused medical treatment for over 8 hours.

59. RN. TALADA explained to the DR. that Plaintiff was the person she had spoke to him about the night prior and that he (DR. BRASALMANN) had made the decision to not send Plaintiff to an outside hospital (8/31/11).

60. DR. BRASALMANN stated "THIS WOUND COULD EASILY GET INFECTED DO TO LACK OF TREATMENT", SEE EXPECTED OUTCOME/INTERVENTION, STATES POTENTIAL FOR INFECTION.

61. A.H.R. DATED 9/1/11 2PM DR. BRASALMANN PUT 11 STAPLES IN RIGHT KNEE. PLAINTIFF GIVEN KNEE SLEEVE (BRACE) TO KEEP KNEE IMMOBLE.

62. INMATE INJURY REPORT 8/31/11 5PM STATES 3" LACERATION X 1/2" LACERATION. A.H.R. 9/1/11 2PM, AFTER STAPLES DONE, RETURNED TO INFIRMARY, (FOR PROTECTIVE CUSTODY AND TO ALLOW INJURY TIME TO HEAL BEFORE RETURNING TO POPULATION).

63. Between 3-5pm, Plaintiff asked MISS JANE DOE for a GREIVANCE FORM. MISS JANE DOE refused to provide a GREIVANCE FORM to the Plaintiff. Plaintiff wrote his GREIVANCE on lined paper and handed it to MISS JANE DOE on her next round.

64. PROGRESS NOTES 9/2/11, 11AM "WILL ADMIT PATIENT TO INFIRMARY AFTER WEEKEND", ALREADY IN INFIRMARY SINCE 8/31/11, SEE INFIRMARY 24 HOUR ADMISSION & OBSERVATION SHORT FORM 8/31/11, 1750 HRS.

65. On 9/2/11 at 11:40am PROGRESS NOTES state "ENTIRE KNEE (RIGHT) BRUISED; STILL BLEEDING, TOLD NOT TO BEND KNEE.

66. Plaintiff was seen by third (different) SGT. on 9/2/11 during the 7-3 SHIFT, MORNING, SGT. stated "THE MATTER HAS BEEN RESOLVED WITH THE OFFICERS, YOU DON'T HAVE TO WORRY ABOUT ANY MORE PROBLEMS".

67. On 9/2/11, BETWEEN 3-4pm when MISS JANE DOE did her normal rounds she brought back Plaintiff's grievance, signed by her, stating "YOUR COMPLAINT WAS UNFOUNDED ON THE GROUNDS THERE IS NO PROOF". Plaintiff signed grievance stating PLAINTIFF DID NOT EXCEPT HER RESPONSE AND WANTED TO SEND GREIVANCE ON TO THE NEXT LEVEL. PLAINTIFF HAS NOT SEEN GREIVANCE SINCE THAT TIME.

68. PLAINTIFF F.O.I.L. REQUESTED ELMIRA I.G.P. ON 11/29/12, F.O.I.L. OFFICE RESPONSE "PER MR. ABRUNZO THERE ARE NO GREIVANCES ON FILE". ON 12/5/12, SENT F.O.I.L. REQUEST TO CLINTON ANNEX I.G. P. REQUESTING A COPY OF SAID GREIVANCE, ON 12/6/12 RESPONSE FROM T. BROUSSEAU, I.G.P. SUPERVISOR, STATES MUST F.O.I.L. ELMIRA FOR COPY OF GREIVANCE, ALREADY DONE.

69. Plaintiff wrote to GOVERNOR ANDREW CUOMO, COMMISSIONER OF CORRECTIONS BRIAN FISCHER and the INSPECTOR GENERAL'S OFFICE on 9/20/11 Plaintiff put these hand written letters in the U.S. POSTAL BOX provided for Offenders.

70. On 9/4-5/11 at APP. 12-1AM, NURSE--(WIFE OF C.O. RONALD MANWARING) entered Plaintiff's room with a C.O; NURSE

asked to see Plaintiff's knee (THIS WAS A COVER UP FOR THE HARRASSMENT THAT FOLLOWED, NURSE NEVER ACTUALLY LOOKED AT PLAINTIFF'S KNEE), she proceeded to lecture (yell) at the Plaintiff about her husband's integrity and how decent a man

he is and about his 20 some years of dedicated service to the State of New York.

71. On 9/6/11 Plaintiff was discharged from the infirmary and sent back to his cell location, A-BLOCK, 4-GALLERY, 8-CELL. INPATIENT DISCHARGE INSTRUCTION dated 9/6/11 state IF ANY SIGNS OF INFECTION PUT IN SICK CALL SLIP. A.H.R. 9/6/11, 1PM VERIFIES SAME INFORMATION. When Plaintiff returned to his cell it had been ramsacked, Other Offenders verified that C.O.s had been in Plaintiff's cell.

72. 9/7/11 Plaintiff's knee swelled up he had a great amount of difficulty bending his knee, he submitted a sick call slip.

73. A.H.R. dated 9/8/11 PLAINTIFF PUT ON KEFLEX 500mg (ANTIBIOTIC) FOR INFECTION IN THE RIGHT KNEE.

73. Mid to late September a CAPTAIN OR LIEUTENANT (can't remember which) came to Plaintiff's cell to question him due to the I.G.'s inquiries, he told Plaintiff he was lying. Plaintiff's neighbor, TRAVIS CORNELL, (CELL #7) was a witness to the assault on 8/31/11, the CAPTAIN or LIEUTENANT told him he didn't want to get involved and didn't want to help a piece of crap like the Plaintiff. Said Officer asked Plaintiff what he wanted to do. Plaintiff informed him that he wanted to press criminal charges and to have appropriate action taken against his assailants, Officer stated he would forward the information to the I.G.'s OFFICE , including a list of witnesses.

74. On OCTOBER 1, 2011 at APP. 1-2AM, Plaintiff's cell gate opened, two C.O.s escorted Plaintiff to the end of the gallery where a SGT. was waiting to question him about incident.

Plaintiff explained to said SGT. that he had already explained his story to 3 SGT.s and a CAPTAIN or a LIEUTENANT. SGT. said it didn't matter, incident happened on his shift, on his block so he wanted to hear the story. After the Plaintiff told the SGT. his story, said SGT. told him he was lying and had Plaintiff put back in his cell after a few small threats to drop the issue.

75. APP. 10-20 minutes later, RICHARD SAID, a witness to the assault on 8/31/11 (A-BLOCK, 3-GALLERY, 39-CELL) was escorted out of his cell to the end of the gallery in his boxer shorts and a tee shirt (no shoes), where the same SGT. who had questioned Plaintiff just moments earlier was waiting to question RICHARD SAID about said assault. SGT. told him he did not want to get involved, MR. SAID told the SGT. he did not fear his threats and he was going to stand up for what was right, SGT. had MR. SAID returned to his cell.

76. 10/2/11 APP. 10-11am Plaintiff was told to pack up his property, he was on the draft to be moved to another facility. When Plaintiff got to the draft room he was told by a C.O. that they (draft officers) were extremely busy and they would put security tags/seals on his bags later, (normal procedure is to seal bags while Offender is present to ensure they are not tampered with). Plaintiff complied and left draft bags open.

77. 10/3/11, AM Plaintiff left ELmira headed to Clinton Correctional Facility Annex, he spent the night of 10/3/11 at Down State Correctional Facility.

78. 10/4/11, ARRIVED AT CLINTON CORRECTIONAL FACILITY ANNEX, LOCATED AT P.O. BOX 2002, DANMORA, NEW YORK 12929 IN THE EVENING AND WAS PLACED IN 14 BUILDING.

79. 10/5/11, 8-12am Plaintiff recieved his property bags (draft bags), as he unpacked his property bags he discovered that his file with all his records from the incident that had accured on 8/31/11 at the Elmira Correctional Facility was gone. Said file Possessed DATES, TIMES, 'NAMES' OF C.O.S, NURSES, SGT.S DR.S and the NAMES OF SEVERAL WITNESSES, ALSO A FULL CRONOLOGICAL TIME LINE OF EVENTS, AND MORE.

80. The seals that were on Plaintiff's draft bags were to the best of his knowledge the same ones that were on his bags when he left Elmira, therefore Plaintiff feels this file had to be removed in Elmira, as nothing else was missing from his property bags.

81. 10/9/11 Plaintiff recieved a letter from KENNETH DECKER, ACTING DEPUTY COMMISSIONER OF CORRECTIONS stating that GOVERNOR ANDREW CUOMO and COMMISSIONER BRIAN FISCHER asked him to respond to his LETTERS regarding the alleging staff misconduct at Elmira CORRECTIONAL FACILITY, Letter also stated that the DEPARTMENTS INSPECTOR GENERAL'S OFFICE has an open investigation at this time.

82. 10/13/11, INVESTIGATOR LONERGAN, from the INSPECTOR GENERAL'S OFFICE came to Clinton Correctional Facility Annex to interview Plaintiff regarding assualt that occured on 8/31/11 at the Elmira Correctional Facility. Said investigator told Plaintiff when he left, he would be in touch and let Plaintiff know what his investigation turns up.

83. 11/29/12 Plaintiff sent F.O.I.L. REQUEST TO THE I.G.'S OFFICE FOR A FULL INVESTIGATION FILE AS HE HAD NEVER HEARD BACK FROM THEIR OFFICE AFTER INITIAL INTERVIEW, on OCTOBER 13,2011.

PLAINTIFF'S CONCLUSION

84. In summary the Plaintiff should not have endured the pain and suffering, which stemmed from the cruel and unusual punishment, nor, the deliberate indifference to his medical needs, which all stemmed from a violation of his 14th Amendment Right to not be discriminated against, as Plaintiff feels he was discriminated against as assault occurred due to the fact that MR. D. MC-
GRAIN assumed Plaintiff was a Sex Offender.

85. The Plaintiff's Constitutional Rights were violated repeatedly, while he was in the care and custody of the Defendants.

86. The Constitutional basis for this claim under 42 U.S.C. §§ 1983 is: The Defendants' actions of cruel and unusual punishment, and that of deliberate indifference, violate Plaintiff's 8th and 14th Amendment's Constitutional Rights.

87. The relief Plaintiff is seeking for this claim is: Monetary Damages; for the cruel and unusual punishment that Plaintiff endured at the hands of the Defendants, and for Plaintiff's conscious pain and suffering, for the duration of time it took the Plaintiff to have his medical needs met.

EXHAUSTION OF PLAINTIFF'S ADMINISTRATIVE REMEDIES FOR THIS CLAIM

88. Plaintiff filed a GRIEVANCE which was never answered, he contacted the Office of the INSPECTOR GENERAL, COMMISSIONER OF CORRECTIONS, BRIAN FISCHER, and GOVERNOR ANDREW CUOMO regarding this assault, which is EXHAUSTION OF ADMINISTRATIVE REMEDIES for this claim to their fullest extent possible.

89. Verifying Plaintiff's exhaustion of ADMINISTRATIVE REMEDIES to the fullest extent, as a result of my grievance not being answered at the Facility level, Plaintiff notified the INSPECTOR GENERAL'S OFFICE of this assault. Plaintiff filed a F.O.I.L: to the INMATE GRIEVANCE RESOLUTION COMMITTEE, both ELMIRA and CLINTON ANNEX CORRECTIONAL FACILITIES, BOTH responded NO GRIEVANCE FOUND. SEE ATTACHMENTS 2-A, 2-A1, 2-B, 2-B1 and 0-A.

RELIEF SOUGHT

90. Plaintiff; JERRY D. GRAYS, demands judgement against Defendants, MR. D. MCGRain, MR. RONALD MANWARING , MR. JOHN DOE #2, MR. MCA; MR. JOHN DOE #3, MR. JOHN DOE #4, MISS. JANE DOE and DR. BRASALMANN, jointly and severally for compensatory damages in the amount of \$8,000,000.00 plus interest and further demand judgement against each Defendant, jointly and severally for punitive damages in the amount of \$2,000,000.00 plus cost of this Action and such other relief as the Court deems just and equitable.

WHEREFORE, PLAINTIFF DEMANDS JUDGEMENT AGAINST DEFENDANTS AS FOLLOWS:

(A) DEFENDANT,

MR. D. MCGRain , IN THE AMOUNT OF \$1,000,000.00 PLUS INTEREST,

(B) DEFENDANT,

MR. RONALD MANWARING , IN THE AMOUNT OF \$1,000,000.00 PLUS INTEREST,

(C) DEFENDANT,

MR. JOHN DOE #2, IN THE AMOUNT OF \$1,000,000.00

PLUS INTEREST,

(D) DEFENDANT,

MR. H. MCALINN, IN THE AMOUNT OF \$1,000,000.00

PLUS INTEREST,

(E) DEFENDANT,

MR. JOHN DOE #3, IN THE AMOUNT OF \$1,000,000.00

PLUS INTEREST,

(F) DEFENDANT,

MR. JOHN DOE #4, IN THE AMOUNT OF \$1,000,000.00

PLUS INTEREST,

(G) DEFENDANT,

MISS. JANE DOE, IN THE AMOUNT OF \$1,000,000.00

PLUS INTEREST,

(H) DEFENDANT,

DR. BRASALMANN, IN THE AMOUNT OF \$1,000,000.00.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FORGOING IS
TRUE AND CORRECT.

EXECUTED ON May 8, 2013.

SWORN TO BEFORE ME THIS

8th DAY OF May, 2013.

Jamie Lee Phillips

NOTARY PUBLIC

Jerry D. Grays

JERRY D. GRAYS

DIN # 11-B-2432

JERRY D. GRAYS DIN #11B2432
CLINTON CORRECTIONAL FACILITY ANNEX
P.O. BOX 2002
DANNEMORA, NY 12929

NOVEMBER 29, 2012

I.G.P. SUPERVISOR
ELMIRA CORRECTIONAL FACILITY
P.O. BOX 500
ELMIRA, NY 14902-0500

I.G.P. SUPERVISOR,

Pursuant to Artical Six(6), Section 89, Subd.3, as amended, of the Public Officers Law, upon reciept of this written request, (F.O.I.L.) kindly provide or make available to me the following;

- 1) Any and all copies of my grievence filed at the Elmira Correctional Facility in the month of September 2011 or thereafter.
- 2) Any and all copies of exhibits filed under said grievance.
- 3) Any and all copies of investigation reports filed under said grievance.

Please be advised I am the grievant of said grievance (dated the first week of September 2011 or thereafter. The reason for my request is due to the fact that I have misplaced my records of such.

Enclosed is a disbursement for all copies of request.

I thank you for your time and consideration in this matter, as I await your timely response.

RESPECTFULLY,

Jerry D. Grays

JERRY D. GRAYS
DIN #11B2432

SWORN TO BEFORE ME THIS

29th DAY OF November, 2012

Jamie Lee Phillips

NOTARY PUBLIC

JAMIE LEE PHILLIPS
Notary Public State of New York
No. 01PH6256426
Qualified in Clinton County
Commission Expire 02/27/20

CC: JDG FILE

STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES
ELMIRA CORRECTIONAL AND RECEPTION CENTER

FOIL OFFICE

TO: J. Grays 1162432

FROM: D. Kobbe, FOIL Officer

RE: YOUR RECENT FOIL REQUEST

DATE: 12/3/12

☒ This memorandum will acknowledge receipt of your memo/request on 12/3/12.☐ As soon as this information is available from the office that retains it, you will be notified of the cost of copying.☐ Your request to review your _____ has been forwarded to your counselor.☐ You must address your FOIL request to:☐ Medical, pursuant to HIPPA.☐ Parole. They handle their own FOIL requests.☐ Mental Health. They handle their own FOIL requests.☐ The document(s) / tape(s) you requested consist of _____. The cost of copying is \$.25 per page, \$1.00 per tape. Upon receipt of your verified disbursement form/check in the amount of _____, the records requested will be forwarded to you after the money has been deducted from your account. **Please make sure you disbursement is signed by you and the source area before forwarding.**☐ Your disbursement has been forwarded to Inmate Accounts for processing. Upon receipt of the yellow copy confirming deduction, I will forward your copies.☒ Your request is denied for the following reason(s):☒ Records do not exist in our files☐ Records are evaluative/confidential in nature and exempt from disclosure.☐ Other: _____☐ Be more specific _____☐ This is not a FOIL request, contact _____☐ Your document(s) are attached and your FOIL request is complete.☒ Other: Per Mr. Abrunzo, there are no Grievances on file.

You have the right to appeal any FOIL decision by writing the Office Of Counsel, NYS Department Of Correctional Services, State Office Bldg #2, 1120 Washington Street, Albany, NY 12226. Include your name, DIN, current facility, date and location of your original request, the records you are requesting and have been denied; and state the reasons given for the denial.

2-B
JERRY D. GRAYS DIN #11-B-2432
LOC: 6-2-13

DECEMBER 5, 2012

I.G.P. SUPERVISOR
CLINTON CORRECTIONAL FACILITY ANNEX

RE: GREIVANCE FILED IN SEPTEMBER 2011 AT ELMIRA CORRECTIONAL FACILITY:

I.G.P. SUPERVISOR,

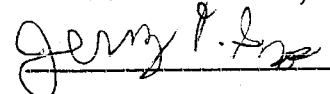
Pursuant to Artical Six(6), Section 89, Subd.3, as amended of the Public Officers Law, upon reciept of this written request, (F.O.I.L.) kindly provide or make available to me the following:

- 1) Any and all copies of my greivance filed at the Elmira Correctional Facility in the month of September 2011 or thereafter.
- 2) Any and all copies of exhibits filed under said greivance.
- 3) any and all copies of investigation reports filed under said greivance.
- 4) Status of said greivance at this time.

Please be advised I am the greivant of said greivance dated the first week of September 2011 or thereafter. The reason for my request is due to the fact that I have misplced my records of such.

I thank you for your time and consideration in this matter, as I await your timely response.

RESPECTFULLY,



JERRY D. GRAYS

DIN #11-B-2432

CC: JDG FILE

STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
CLINTON ANNEX CORRECTIONAL FACILITY
INMATE GRIEVANCE PROGRAM

TO: GRAYS, J (1304326-2-13)
FROM: T. BROUSSEAU, IGP SUPERVISOR
DATE: 12/6/12
SUBJECT: RECENT COMMUNICATION DATED 12/5/12

In your recent communication you requested copies of grievances filed at Elmira C.F. You are advised that you must submit a FOIL request to the FOIL officer at Elmira C.F. to request these records. Grievance records are maintained at the facility where they are filed.

cc. file

0-A

I ALSO HAVE COPIES OF THE ORIGINAL LETTERS SENT TO THE INSPECTOR GENERAL'S OFFICE AND GOVERNOR CUOMO'S OFFICE DATED SEPTEMBER 20, 2011. SAID LETTER'S BOTH STATE I (PLAINTIFF) ATTEMPTED TO GET A GRIEVANCE FORM ON AUGUST 31, 2011, AND WAS DENIED ONE. THESE LETTER'S ALSO PROVED THAT DUE TO THE FACT THAT I WAS DENIED A GRIEVANCE FORM I STILL EXHAUSTED MY ADMINISTRATIVE REMEDIES BY GOING TO THE NEXT LEVEL OF ADMINISTRATION IN THE NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION.

AT THIS SAME TIME (SEPTEMBER 20, 2011) I ALSO WROTE TO COMMISSIONER OF CORRECTIONS, FISCHER, I HAVE NOT BEEN ABLE TO OBTAIN A COPY OF THAT ORIGINAL LETTER AS OF YET.

VERIFICATION

STATE OF NEW YORK)
COUNTY OF CLINTON) ss.:
CITY OF DANNEMORA)

JERRY D. GRAYS DIN #11B2432, being duly sworn, deposes and says that: " I am the Deponent and litigant in the instant proceeding, and have read the foregoing documents, and all other papers submitted by me, and in my behalf, and know the contents therein; that the same is true and accurate to the best of my knowledge and belief, except as to those matters cited as based upon " information and belief", and, as to those matters, I believe them to be true, based upon what is presently known and understood by me, as true and accurate."

Dated: MAY 8, 2013

At: Dannemora, New York

Sworn to before me this

8th day of May 2013

Jamie Lee Phillips
NOTARY PUBLIC

Jerry D. Grays
JERRY D. GRAYS DIN #11B2432
CLINTON CORRECTIONAL FACILITY
P.O. BOX 2002, DANNEMORA, N.Y.
12929

JAMIE LEE PHILLIPS
Notary Public State of New York
No. 01PH6256426
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Commission Expires 02/27/2016